

UNITED STATES OF AMERICA

V.

JOHNSY AGOSTO

Defendant.

OPINION & ORDER

Cr. No. 02-0581 (WHW)

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NOT FOR PUBLICATION

Under the new law, Agosto would not have been subject to the mandatory minimum sentence. He argues that the Act applies retroactively to his sentence. However, Congress did not expressly make the Act retroactive to previously imposed sentences. When an act that amends the penalties for a criminal offense is silent on its retroactive effect, the general saving statute applies. *See generally United States v. Jacobs*, 919 F.2d 10 (3d Cir. 1990). The saving statute states that “The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide.” 1 U.S.C. § 109. This statute “bar[s] application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.” *Warden v. Marrero*, 417 U.S. 653, 661 (1974). The saving statute therefore prevents the Fair Sentencing Act from operating retroactively absent any indication from Congress. Since there is no indication in the Act that it applies retroactively, it cannot help Agosto here.²

IT IS ORDERED that defendant’s motion for reduction of his sentence is **DENIED**.

November 22, 2010

/s/ William H. Walls
United States Senior District Judge

² The Court notes that although the Third Circuit has yet to specifically rule on the retroactivity of the Fair Sentencing Act, every Circuit court to have thus far considered the Act’s retroactive effect on previously imposed sentences has concluded that the Act does not apply retroactively. *See, e.g., United States v. McAllister*, No. 10-4387, 2010 U.S. App. LEXIS 23485 (4th Cir. Nov. 12, 2010); *United States v. Hall*, No. 09-10216, 2010 U.S. App. LEXIS 23423 (9th Cir. Nov. 10, 2010); *United States v. Glover*, No. 09-1725-cr, 2010 U.S. App. LEXIS 22211 (2d Cir. Oct. 27, 2010); *United States v. Bell*, Nos. 09-390 & 09-3914, 2010 U.S. App. LEXIS 21614 (7th Cir. Oct. 20, 2010); *United States v. Brown*, No. 10-1791, 2010 U.S. App. LEXIS 21135 (8th Cir. Oct. 12, 2010); *United States v. Gomes*, 621 F.3d 1343 (11th Cir. 2010); *United States v. Carradine*, 621 F.3d 575 (6th Cir. 2010).